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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/554,211 | 05/10/2000 | COREY JAMES KENNEALLY | 6934 | 6519 |

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| EXAMINER |
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CARR, DEBORAH D

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| ART UNIT | PAPER NUMBER |
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1621

DATE MAILED: 12/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

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|----------------------------|------------------|
| Application No. | KENNEALLY ET AL. |
| Examiner Deborah D Carr | Art Unit 1621 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 02 September 2004.
2a) This action is FINAL. 2b) This action is non-final.
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 11-31 and 40-47 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) Claim(s) 31 is/are allowed.
6) Claim(s) 11-15, 17, 18, 20-24, 28-30, 40, 41, 45 and 47 is/are rejected.
7) Claim(s) 16, 19, 25-27, 42-44 and 46 is/are objected to.
8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____

DETAILED ACTION

Response to Arguments

1. Regarding claims 2-7, that are mention in paragraph 8 on page 4 of the office action dated 3 June 2004, the inclusion of claims 2-7 was a clerical error. Claims 32-39 should have been listed, as these claims were product by process claims. See paragraph 9 on the same page that states claims 11-39 would be treated as compounds claims based on the rational of paragraph 8.
2. Applicant's arguments filed 2 September 2004 have been fully considered but they are not persuasive regarding the rejection of claims 11-13, 17-18, 20. The rejection of claims 11-39 under 35 USC§112, second paragraph has been withdrawn.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 11-13, 17-18, & 20 rejected under 35 U.S.C. 103(a) as being unpatentable over Klok et al (EP-391,485).

Applicants argue that the reference fail to show certain features of applicant's invention, such as elevated pressure. However "elevated" is a relative term and since no range is given for the pressure, it is open to interpretation. The elevated temperatures that applicants refer to in dependent claim 23, one would not possibly consider elevated since 760 mmHg is atmospheric pressure. Therefore Klok et al. would read on the instant invention because the water-washing step is conducted at atmospheric pressure.

Based on applicant's own interpretation of the term "elevated", one of ordinary skill in the art would not include what is normally regarded as atmospheric pressure.

The following rejections are deemed proper:

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 11-15, 17-18, 20-24, 28-30, 40-41, 45, 47 rejected under 35 U.S.C. 103(a) as being unpatentable over Klok et al. (US Pat. 5,116,546) in view of Kenneally (US Pat. 5,491,226).

The claims supra read on processes of making high purity fatty acid esters and using said esters to make fatty acid polyol polyesters. Both processes of said claims uses water to wash the product mixture containing said fatty acid esters, which are then fractionation to obtain high purity fatty acid esters. These high purity fatty acid esters are transesterified with a polyol to obtain fatty acid polyol polyesters.

Klok (US'546) discloses a process of preparing fatty acid lower alkyl esters wherein esters are formed via esterification, by-products separated via conventional water washing, the water-washed ester produces is distilled to produce an ester product of at least 98%, an acid value less than 10, under elevated temperatures. The process also includes a bleaching step. Applicable fatty acid sources include vegetable oils that may be

partially or fully harden, see col. 2, lines 41-55 and col. 3, lines 1-5 which contain fatty acids having at least 24 carbon atoms and applicable alcohols include methanol, see col. 2, lines 47-49). The claims differ from the reference by stating that the washing step is conducted under elevated pressure, a temperature range for the distillation step and that the esters are then used make fatty acid polyol polyesters.

However, it would have been obvious to one of ordinary skill in the art to modify the pressure of the washing step because it is taught on page 3, col. 3, lines 44-49 that the reaction conditions can be atmospheric as well as sub- or super atmospheric. Also it should be noted that the entire process is conducted under pressure in closed systems there one can extrapolate that washing step is conducted under elevated pressure also. The temperature range for distillation although not mention in US'546 is conventionally known as shown in Kenneally, (see col. 6, lines 6-19).

Using said esters to produced polyol polyesters would have been also obvious to one of ordinary skill in the art. Kenneally (US'226) also discloses that fatty acid lower alkyl esters produced via an esterification process as taught in US'546 can be used to make polyol polyesters.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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8. Claims 12-13, 21-22 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

9. Claim 12 recites the limitation "l" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 was cancelled and is no longer being prosecuted. Correction to the dependency of this claim would overcome this rejection.

Allowable Subject Matter

10. Claim 31 is allowable over the prior art.

11. Claims 16, 19, 25-27, 42-44, 46 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah D Carr whose telephone number is 571-272-0637. The examiner can normally be reached on Monday-Friday 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DEBORAH D. CARR
PRIMARY EXAMINER

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